

AB-378U

10/698,097

REMARKS

This is a full and timely response to the non-final Official Action mailed December 6, 2006 which imposed a Restriction Requirement in the present application. Accordingly, Applicant makes the following election and requests that examination of the elected claims on their merits be promptly conducted in light of the following remarks.

In the outstanding Office Action, the Office alleges that the present application contains claims drawn to two independent and patentably distinct inventions. The claims are grouped as follows:

Claim Group 1: Claims 1-15; and

Claim Group 2: Claims 16-23.

In response, Applicant elects Claim Group 1, claims 1-15 for immediate examination. All other original claims are labeled as "withdrawn" herein.

Applicant does not disclaim the subject matter of any withdrawn claim and reserves the right to file any number of continuation or divisional applications to the withdrawn claims or to any other subject matter described in the present application.

Applicant further traverses this odious Restriction Requirement. Applicant notes that the claims now withdrawn, i.e., claims 16-23, have been examined in several proceeding Office Actions in this application including the Actions of November 3, 2005; February 14, 2006 and May 18, 2006. In each of these Actions, the subject matter of these claims has been searched by the Office and examined. It is therefore unreasonably and grossly unfair to the Applicant for the Office to now withdraw claims 16-23 from examination.

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According to the MPEP § 803, if the search and examination of claims in an application can be made without serious burden, the examiner must examine those claims on the merits, even though they include claims to independent or distinct inventions. In this case, a prior art search on claims 16-23 has already been performed at least three times, as has a resulting examination opinion on those claims. Since this work has already been done at least three times, it is unclear how the Office can possibly allege that a serious burden is now presented with regard to these claims. Applicant notes that no amendment was made to claims 16-23 in Applicant's latest filing.

It is, therefore, inappropriate and unfair to the Applicant for the Office to impose a Restriction Requirement on claims 16-23 at this point in the prosecution of the application. Consequently, per the provisions of MPEP § 803, Applicant respectfully requests that the Office Action of December 6, 2006 be withdrawn and the examination of claims 1-23 be completed.


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If any fees are owed in connection with this paper that have not been elsewhere authorized, authorization is hereby given to charge those fees to Deposit Account 18-0013 in the name of Rader, Fishman & Grauer PLLC. If the Examiner has any comments or suggestions which could place this application in even better form, the Examiner is requested to telephone the undersigned attorney at the number listed below.

Respectfully submitted,

DATE: January 5, 2007

  
Steven L. Nichols  
Registration No. 40,326

Steven L. Nichols, Esq.  
Managing Partner, Utah Office  
**Rader Fishman & Grauer PLLC**  
River Park Corporate Center One  
10653 S. River Front Parkway, Suite 150  
South Jordan, Utah 84095

(801) 572-8066  
(801) 572-7666 (fax)

**CERTIFICATE OF TRANSMISSION**

I hereby certify that this correspondence is being transmitted to the Patent and Trademark Office facsimile number 571-273-8300 on January 5, 2007. Number of Pages: 17

  
Rebecca R. Schow